

House Bill 735

By: Representatives McCall of the 30th, Crawford of the 127th, England of the 108th, and Roberts of the 154th

A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 11 of Title 4 of the Official Code of Georgia Annotated, relating to general provisions relative to animal protection, so as to change certain provisions relating to inspections, impoundment of animals, and exceptions; to change certain provisions relating to caring for an impounded animal; to change certain provisions relating to notification of owner and custody of animal; to change certain provisions relating to failure to respond, right to hearing, care, and crime exception; to change certain provisions relating to disposal of impounded animal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 11 of Title 4 of the Official Code of Georgia Annotated, relating to general provisions relative to animal protection, is amended by striking Code Section 4-11-9.2, relating to inspections, impoundment of animals, and exceptions, and inserting in lieu thereof the following:

"4-11-9.2.

(a) At any time there is probable cause to believe that a violation of this article or any rule or regulation adopted pursuant to this article has occurred, the Commissioner, his or her designated agent, or an animal control officer who is an employee of state or local government may apply to the appropriate court in the county in which the animal is located for an inspection warrant under the provisions of Code Section 2-2-11.

(b) Any sheriff, deputy sheriff, or other peace officer shall have the authority to enforce the provisions of this article and Code Sections 16-12-4 and 16-12-37.

(c) The Commissioner, his or her designated agent, an animal control officer who is an employee of state or local government, or any sheriff, deputy sheriff, or other peace officer is authorized to impound any animal:

(1) That has not received humane care;

(2) That has been subjected to cruelty in violation of Code Section 16-12-4;

H. B. 735

(3) That is used or intended for use in any violation of Code Section 16-12-37; or

(4) If it is determined that a consent order or other order concerning the treatment of animals issued pursuant to this article is being violated.

(d) Prior to an animal being impounded pursuant to paragraph (1), (2), or (3) of subsection (c) of this Code section, a licensed ~~accredited~~ veterinarian ~~approved by the Commissioner~~ or a veterinarian employed by a state or federal government ~~and approved by the Commissioner~~, shall, at the request of the Commissioner, his or her designee, an animal control officer, a sheriff, a deputy sheriff, or other peace officer, examine and determine the condition or treatment of the animal.

(d.1) The Commissioner, his or her designated agent, an animal control officer who is an employee of state or local government, or any sheriff, deputy sheriff, or other peace officer shall be authorized to impound any animal without a veterinarian on site if:

(1) An animal is found to be severely injured, diseased, or neglected;

(2) The animal's condition appears to be life threatening; and

(3) Immediate medical attention is necessary to save the animal's life or to lessen the animal's suffering.

Under such exigent circumstances, the animal shall be taken immediately to a licensed veterinarian or a veterinarian employed by a state or federal government for veterinary services. Any authorized person acting in good faith who determines immediate action under this Code section is required to protect an animal's health and safety shall not be liable for damages for taking such action.

(d.2) The Commissioner, his or her designated agent, an animal control officer who is an employee of state or local government, or any sheriff, deputy sheriff, or other peace officer who is impounding an animal may accept a voluntary relinquishment of such animal from the owner at any time during the investigation under this Code section. Consent to such voluntary relinquishment, including a description of the animal, the date of consent, and the owner's name, shall be provided in writing by the owner.

(d.3) If the animal is deceased and cruelty is suspected, the carcass shall be seized as evidence, and the impounding agent shall make arrangements to have a necropsy performed within 24 hours of receipt of the carcass.

(e) The provisions of this Code section and Code Sections 4-11-9.3 through 4-11-9.6 shall not apply to scientific experiments or investigations conducted by or at an accredited college or university in this state or research facility registered with the Commissioner or the United States Department of Agriculture."

SECTION 2.

Said article is further amended by striking Code Section 4-11-9.3, relating to caring for an impounded animal, and inserting in lieu thereof the following:

"4-11-9.3.

(a) It shall be the duty of any person impounding an animal under Code Section 4-11-9.2 to make reasonable and proper arrangements to provide the impounded animal with humane care and adequate and necessary veterinary services. Such arrangements may include, but shall not be limited to, providing shelter and care for the animal at any state, federal, county, municipal, or governmental facility or shelter; contracting with a private individual, partnership, corporation, association, or other entity to provide humane care and adequate and necessary veterinary services for a reasonable fee; or allowing a private individual, partnership, corporation, association, or other entity to provide humane care and adequate and necessary veterinary services as a volunteer and at no cost.

(b) Any person impounding an animal under this article or providing care for an impounded animal shall have a lien on such animal for the reasonable costs of caring for such animal. Such lien may be foreclosed in any court that is competent to hear civil cases, including, but not limited to, magistrate courts. Liens shall be foreclosed in magistrate courts only when the amount of the lien does not exceed the jurisdictional limits established by law for such courts.

(c) ~~Any~~ At his or her discretion and based upon the condition of the animal, the violation involved, and the fitness of the owner, any person impounding an animal under this article is authorized to return the animal to its owner; upon payment by the owner of all costs of impoundment and care and upon the entry of a consent order; ~~unless such owner was, in a prior administrative or legal action in this state or any other state, found to have failed to provide humane care to an animal, committed cruelty to animals, or engaged in dog fighting in violation of the laws of this state or of the United States or any of the several states.~~ Such consent order shall provide conditions relating to the care and treatment of such animal, including, but not limited to, the following, that:

(1) Such animal will be given humane care and adequate and necessary veterinary services;

(2) Such animal will not be subjected to cruelty;

(2.1) The owner shall notify the impounding agency if the animal becomes sick or dies or if the owner intends to permanently remove the animal from the owner's premises; and

(3) The owner will comply with this article.

(d) The provisions of subsection (c) of this Code section authorizing return of an animal shall not apply to:

1 (1) To an animal that was an object or instrumentality of a crime ~~nor shall any such~~
2 ~~animal be returned to the owner without the approval of the prosecuting attorney. An~~
3 ~~agency having custody of an animal that was seized as an object or instrumentality of a~~
4 ~~crime may, with the consent of the prosecuting attorney, apply to the court having~~
5 ~~jurisdiction over the offense for an order authorizing such agency to dispose of the animal~~
6 ~~prior to trial of the criminal case as provided by law; or~~

7 (2) If in any prior administrative or legal action in this state or any other state the owner
8 was found to have failed to provide humane care to an animal, committed cruelty to
9 animals, or engaged in animal fighting or baiting in violation of the laws of this state or
10 of the United States or any of the several states."

11 **SECTION 3.**

12 Said article is further amended by striking Code Section 4-11-9.4, relating to notification of
13 owner and custody of animal, and inserting in lieu thereof the following:

14 "4-11-9.4.

15 (a) It shall be the duty of any person impounding an animal under this article to notify the
16 owner of such animal immediately upon impoundment. Such notice shall state the name
17 and business address of the person impounding the animal, the name and address of the
18 state or local government agency having custody of the animal, a description of the animal,
19 the reason why the animal was impounded, and a statement of the time limits for the owner
20 to respond and request a hearing as provided in Code Section 4-11-9.5. The notice shall be
21 provided by personal service or by registered mail, certified mail, or statutory overnight
22 delivery sent to the last known address of the owner. Service of the notice which complies
23 with subsection (b) of Code Section 9-11-5 shall in all cases be sufficient. If the owner of
24 such animal is unknown or cannot be found, service of the notice on the owner shall be
25 made by posting the notice in a conspicuous place at the location where the animal was
26 impounded and by publishing a notice once in the next available edition of a newspaper of
27 general circulation in the county where the animal was impounded.

28 (b) An animal impounded pursuant to this article is deemed to be in the custody of the state
29 or local government agency responsible for enforcement of this article within said county
30 or municipality."

31 **SECTION 4.**

32 Said article is further amended by striking Code Section 4-11-9.5, relating to failure to
33 respond, right to hearing, care, and crime exception, and inserting in lieu thereof the
34 following:

1 "4-11-9.5.

2 (a) If the owner of an animal impounded pursuant to this article fails to respond in writing
3 within five business days of the date the notice of impoundment was served, or, if the
4 owner is unknown or could not be found within ~~30~~ 15 days of publication of the notice of
5 impoundment, the impounded animal may be disposed of pursuant to Code Section
6 4-11-9.6.

7 (b)(1) If the owner of an animal impounded pursuant to this article refuses to enter into
8 a consent ~~agreement with the government agency having custody of the animal that such~~
9 ~~animal will be given humane care and adequate and necessary veterinary care~~ order
10 pursuant to subsection (c) of Code Section 4-11-9.3, the owner may request, in writing,
11 a hearing within five business days of the date the notice of impoundment was served on
12 such owner, or, if the owner is was unknown or could not be found, within ~~30~~ 15 days of
13 the date of publication of the notice of impoundment. Such request for hearing shall be
14 served upon the government agency having custody of the animal. If no hearing is
15 requested within the time limits specified in this paragraph and the failure to request such
16 hearing is due in whole or in part to the reasonably avoidable fault of the owner, the right
17 to a hearing shall have been waived.

18 (2) Within ~~30~~ ten days after receiving a written request for a hearing, the government
19 agency having custody of the animal shall hold a hearing as is provided in Chapter 13 of
20 Title 50, the 'Georgia Administrative Procedure Act.' If the animal is in the custody of an
21 agency of local government which has, by local law or ordinance, established a procedure
22 for hearing such matters, the body designated in such local law or ordinance shall conduct
23 the hearing required by this Code section. If the local government does not have a hearing
24 procedure, the government agency having custody of the animal may refer the matter to
25 the Office of State Administrative Hearings. If the animal is in the custody of the
26 Department of Agriculture, the Commissioner or his or her designee shall conduct the
27 hearing. The hearing shall be public and all testimony shall be received under oath. A
28 record of the proceedings at such hearing shall be made and maintained by the hearing
29 officer as provided in Code Section 50-13-13.

30 ~~(3) The scope of the hearing shall be limited to whether the impounding of the animal~~
31 ~~was authorized by subsection (c) of Code Section 4-11-9.2. The hearing officer:~~

32 (A) Shall determine whether the impounding of the animal was authorized under Code
33 Section 4-11-9.2;

34 (B) Shall determine whether any owner violating Code Section 16-12-37 shall be
35 deemed unfit and whether an animal seized therefrom shall be returned to the owner.

36 Fitness of an owner may be determined from:

1 (i) Testimony from the agent or officer who seized the animal and other witnesses as
2 to the condition of the animal when seized and as to the conditions under which the
3 animal was kept;

4 (ii) Testimony and evidence as to the veterinary care provided to the animal;

5 (iii) Testimony and evidence as to the type and amount of other care provided to the
6 animal;

7 (iv) Expert testimony as to the community standards for proper and reasonable care
8 of the same type of animal;

9 (v) Testimony from any witnesses as to prior treatment or condition of the animal or
10 other animals in the same custody;

11 (vi) The owner's past record of judgments under the provisions of this chapter;

12 (vii) Convictions under statutes prohibiting cruelty to animals; and

13 (viii) Any other evidence the hearing officer considers to be material or relevant; and

14 (C) May determine whether any other animal that is in the custody of the owner and
15 that was not seized by the officer or agent should be turned over to the officer or agent
16 if the court determines that the owner is unable or unfit to adequately provide for the
17 animal and may enjoin further possession or custody of other animals.

18 If there is any evidence indicating a lack of proper and reasonable care of the animal, the
19 burden shall be upon the owner to demonstrate by clear and convincing evidence that he
20 or she is able and fit to have custody of and provide adequately for the animal.

21 (4) The hearing officer shall, within five business days after such hearing, forward a
22 decision to the person who impounded the animal and the government agency having
23 custody of the animal.

24 (5) If the hearing officer finds that the animal was improperly impounded, the animal
25 shall be returned to the owner and the cost incurred in providing reasonable care and
26 treatment for the animal from the date of impoundment to the date of the order shall be
27 paid by the impounding agency.

28 (6) If the hearing officer finds that the animal was lawfully impounded, the hearing
29 officer may:

30 ~~(A) Recommend~~ recommend that the government agency having custody of the animal
31 dispose of the animal as provided in Code Section 4-11-9.6; ~~or~~

32 ~~(B) Unless, in a prior administrative or legal action in this state or any other state, the~~
33 ~~owner has been found to have failed to provide humane care to an animal, committed~~
34 ~~cruelty to animals, or engaged in dog fighting in violation of the laws of this state or of~~
35 ~~the United States or any of the several states, recommend conditions under which the~~
36 ~~animal may, upon payment by the owner of all costs of impoundment and care, be~~
37 ~~returned to the owner. Such conditions shall be reduced to writing and served upon the~~

owner and the government agency having custody of the animal. Such conditions may include, but are not limited to, the following, that:

- (i) ~~Such animal will be given humane care and adequate and necessary veterinary services;~~
- (ii) ~~Such animal will not be subjected to mistreatment; and~~
- (iii) ~~The owner will comply with this article.~~

(c) ~~The provisions of this Code section shall not apply to~~ provided, however, that if:

(A) The an animal that was an object or instrumentality of a crime; or

(B) In any prior administrative or legal action in this state or any other state the owner was found to have failed to provide humane care to an animal, committed cruelty to animals, or engaged in animal fighting or baiting in violation of the laws of this state or of the United States or any of the several states.

then the animal shall be forfeited to the government agency having custody of the animal, which agency shall be authorized to dispose of the animal as provided in Code Section 4-11-9.6; and provided, further, that prior to trial of a criminal case, nor shall any such animal shall not be returned to the owner or disposed of without the approval of the prosecuting attorney."

SECTION 5.

Said article is further amended by striking Code Section 4-11-9.6, relating to disposal of impounded animal, and inserting lieu thereof the following:

"4-11-9.6.

(a) The government agency having custody of an animal impounded pursuant to this article which is not returned to the owner as provided in Code Sections 4-11-9.3 and 4-11-9.5 may dispose of the animal ~~through~~:

(1) Through sale by any commercially feasible means, at a public auction or by sealed bids, or, if:

(2) By giving the animal and transferring ownership thereof to an individual, a licensed humane society, licensed animal rescue group, or other entity; or

(3) If in the opinion of a licensed accredited veterinarian or a veterinarian employed by a state or federal government and approved by the Commissioner such animal has a temperament or condition such that euthanasia is the only reasonable course of action, by humanely disposing of the animal.

(b) Any proceeds from the sale of such animal shall be used first to pay the costs associated with the impoundment, including, but not limited to, removal of the animal from the premises, shelter and care of the animal, notice, hearing, and disposition of the animal. Any funds remaining shall:

(1) If the owner is unknown or cannot be found, be paid into the state treasury if the animal was impounded by the Commissioner or his or her designated agent or into the treasury of the local government if the animal was impounded by the sheriff, a deputy sheriff, another law enforcement officer, or an animal control officer; or

(2) If the owner is known, be paid to the owner.

(c) The government agency responsible for conducting the sale shall keep a record of all sales, disbursements, and distributions made under this article."

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.